IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6845 of 1999

with

CIVIL APPLICATION NO.5115 OF 2000

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EVEREST MINERALS CO.

Versus

RAMSING TENTIYA KOLI

Appearance:

1. First Appeal No. 6845 of 1999

MR NAVIN K PAHWA for Petitioner No. 1-3

MR MTM HAKIM for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 10/10/2003

ORAL JUDGEMENT

The appellants by filing this appeal under

Section 30 of the Workmen's Compensation Act (to be referred to as "the Act" for short) has challenged the judgment and award dated August 25, 1989, of the learned Labour Court and Ex-Officio Commissioner, Vadodara, in Workmen Compensation Application No.109 of 1992, by which the Commissioner awarded compensation of Rs.67,200/together with interest of 18 % per annum from the date of the accident till realisation and directed the appellants to pay penalty at the rate of 50 % on the amount of Rs.67,200/-.

2. The respondent-workman had met with an accident on September 7, 1989, while he was working in the factory of the appellants, as a result of which his left leg below the knee came to be amputated. The workman therefore, filed a claim under the Act claiming compensation of Rs.44,800/- before the Commissioner along with penalty at the rate of 50 % on the awarded amount and interest. The claim of the respondent was contested by the appellant by filing reply at Exh.12. It was contended that the workman on his own had climbed on the Chimni and therefore, the appellants were not liable to pay the compensation as the accident had taken place due to negligence and carelessness on the part of the workman.

3. The Commissioner raised issued at Exh.21 and after considering the oral as well as documentary evidence led by the parties had awarded an amount of compensation as stated in paragraph 1 of this order.

4. Heard learned counsel for the parties. It is an admitted fact that the workman had claimed compensation of Rs.44,800/- in his claim application, whereas the Commissioner had awarded Rs.67,200/-. The judgment and award is therefore, requires to be quashed and set aside and instead it is held that the workman-respondent shall be entitled to compensation of Rs.44,800/- as claimed before the Commissioner with interest at the rate of 6 % per annum instead of 6 % per annum from the date of the accident till realisation. With regard to the penalty, the Commissioner had awarded at the rate of 50 %, but in the facts and circumstances of the case, it would be in the interest of justice that the appellants should be directed to pay penalty at the rate of 30 % on Rs.44,800/-, the amount of compensation awarded to the workman-respondent.

5. As a result of the foregoing discussion, this appeal is partly allowed. The appellants are directed to pay to the respondent-workman compensation of Rs.44,800/-

for the injuries sustained by him during the course of the employment of the appellants along with interest at the rate of 6 % per annum from the date of the accident till realisation. The appellants shall also pay penalty at the rate of 30 % on the amount of Rs.44,800/-. The appellants are directed to deposit the amount of compensation along with interest and penalty within three months from today. There shall be no order as to costs.

6. As the appeal is finally disposed of, Civil Application No.5115 of 2000 does not survive and stands disposed of accordingly.

(M.H.Kadri, J.)

*mithabhai